

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2862 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AHER KARSAN RAM SOLANKI

Versus

SPECIAL SECRETARY - REVENUE DEPARTMENT (APPEALS)

Appearance:

1. Special Civil Application No. 2862 of 2003
MR AMAR D MITHANI for Petitioner No. 1
MR SIRAJ GORI, AGP. for Respondent No. 1-3
..... for Respondent No. 4
NOTICE SERVED for Respondent No. 4/1-4/6

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2003

ORAL JUDGEMENT

1 On 19.7.2003 the following order was made by this Court :

"Heard Mr.A.D.Mithani, learned Advocate for the petitioner and Mr.Siraj Gori, learned AGP. appearing on behalf of Respondent Nos. 1 to 3. Though served there is no appearance on behalf of Respondent No.4. Mr.Gori, learned AGP. seeks time to obtain instructions as to whether Respondent Nos. 1 to 3 are inclined to withdraw the orders of the Collector dated 26.11.1996 and the Revisional Authority dated 16.12.2002 so as to enable the authorities to initiate fresh action. S.O. to 28.07.2003."

2 Today when the matter was taken up for hearing Mr.Siraj Gori, learned Assistant Government Pleader for the respondent authorities expresses inability of the authorities to withdraw the orders of the Collector dated 26.11.1996 and the Revisional Authority dated 16.12.2002. In the circumstances, the petition is being decided finally today.

3 Mr.Amar Mithani, learned Advocate for the petitioner seeks permission to delete respondent nos. 4/1 to 4/6. In the circumstances, permission to delete respondent nos. 4/1 to 4/6 is granted.

4 Rule. Mr.Siraj Gori, learned Assistant Government Pleader appears and waives service of Rule on behalf of respondents. By consent of the parties, the matter is taken up for final hearing and disposal.

5 On 27.12.1978 the petitioner purchased land admeasuring 1 acre 8 gunthas and survey nos.252/1 and 252/2 situated in village Lathi, Taluka Veraval, Dist.Junagadh vide registration no.2361 registered in the office of Sub-Registrar, Veraval. It appears that pursuant to the said purchase on 10.6.1992 Entry No.1409 was made by Talati in the revenue records but as a dispute was raised by one Aher Rajsai Puja the matter was forwarded to the Mamlatdar, Veraval. After hearing the parties including Talati, the Mamlatdar held that there was no error in mutation Entry No.1409 and the objection raised by Rajsai Puja was rejected. Before passing the aforesaid order dated 28.5.1993 the Mamlatdar has recorded statement of Talati wherein the Talati has stated that the lands in question are irrigated lands and the said lands are not fragmented and unencumbered. The Mamlatdar on the basis of the aforesaid deposition of the Talati records a finding that the land has been purchased

by a valid registered document, the land is irrigated land and is unencumbered. It is further recorded in the order that the land is within 5 kms. of coastal line and is not hit by provisions of the Bombay Prevention of Fragmentation and Consolidation Act, 1947. Accordingly, Entry No.1409 was duly certified.

6 On 27.12.1995 the Collector, Junagadh issued show cause notice for initiating revisional action and ultimately passed an order dated 26.11.1996 in Land Revenue Case No.17 of 1995. The final order passed by the Collector stated that the order of the Mamlatdar was quashed and even Entry No.1409 was quashed for the reasons stated in his order.

7 The petitioner went in revision before the Secretary, Revenue Department (Appeals) and vide order dated 28.12.2002, the Revisional Authority has confirmed the order of the Collector cancelling Entry No.1409.

8 Mr. Mithani, learned Advocate for the petitioner submitted that the order of the revisional authority is bad in law as it does not assign any reason except stating that the Mamlatdar has merely based his order on the dispute raised by the third party without appreciating whether the land is fragment or not, whether it was encumbered or not and for these reasons the order of the Collector cancelling the entry was required to be upheld. It is submitted that the said observations of the Revisional Authority do not show application of mind even in relation to the order of the Mamlatdar. It was also submitted that even the order of the Collector proceeds on the footing that the Fragmentation Act is applicable to land which may be having area of less than 1 acre and includes land falling within the coastal zone as well as which is irrigated. That the Collector has erroneously observed that at the time when the sale was carried out the land was having encumbrance of Cooperative Society. In the circumstances, it was submitted that the orders of the Collector and the Revisional Authority were not supported by any evidence on record. That both the authorities have failed to consider various issues raised before the authorities including written submissions filed before the Revisional Authority. In this connection, attention was invited to Government Resolution dated 28.9.1982 which is applicable in case of irrigated land and in what circumstances the same may not be considered to a fragment under the Fragmentation Act as well as the communication dated 1.5.1991 issued from the office of the Collector, Junagadh.

9 Mr.Gori, learned AGP. appearing on behalf of the respondent authorities submitted that the order passed by the Collector was a speaking order and it was the said order which was confirmed by the Revisional Authority. That once the Revisional Authority agrees with the reasons and findings of the Collector, it was not necessary to reiterate the said reasons and findings in its order and it should be deemed that the said reasons and findings form part of the order of the Revisional Authority. It was submitted, therefore, that the petition ought to be rejected as the authority has rightly exercised jurisdiction under Section 211 of the Bombay Land Revenue Code read with Rule 108(6) of the Rules under the Code.

10 As already stated hereinbefore, after hearing the aforesaid contentions of both the sides and on perusal of the order of the Collector and the Revisional Authority the aforesaid order dated 19.7.2003 had been passed by this Court.

11 As can be seen from the order of the Revisional Authority, on a plain reading it is apparent that the authority has not even taken care to go through the order of the Mamlatdar while upholding the order of the Collector. The Revisional Authority states that whether the land is fragment or not, or whether it is encumbered or not had not been considered by the Mamlatdar. As already stated hereinbefore, the Mamlatdar has recorded specific findings on both these aspects after recording and referring to the deposition of the Talati. In the circumstances, the order of the Revisional Authority cannot be permitted to stand.

12 The order of Collector dated 26.11.1996 also suffers from an identical infirmity in as much as the Collector has proceeded on the footing that the land is falling within the Fragmentation Act as well as it was encumbered when the sale took place. It is unfortunate that the authority has not even mentioned as to the name of the Cooperative Society with whom the said land is said to be encumbered, nor has the authority even mentioned as to when and how the charge was created and whether the said charge was created by the predecessor in title of the petitioner or the petitioner after the land was purchased. This was necessary in light of the finding recorded by the Mamlatdar on the basis of the deposition of the Talati that the land was unencumbered. Furthermore, both the Collector and the Revisional Authority have failed to appreciate that the land was

purchased by a registered document and in the document the vendor has categorically stated that the land is free from all encumbrances.

13 In light of the aforesaid fact situation, to say the least, the orders of the Collector and the Revisional Authority are bad in law as the findings and conclusion are such which no reasonable person would arrive at on the basis of the facts and circumstances obtained on the record. It is for these reasons that the said orders are required to be quashed and set aside and the order of the Mamlatdar dated 28/5/1993 certifying Entry No.1409 requires to be upheld. Accordingly, the order of the Collector dated 26.11.1996 and of the Revisional Authority dated 28.12.2002 are quashed and set aside and the order of the Mamlatdar dated 28.5.1993 is restored. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

m.m.bhatt